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In the Supreme Court of the United States

OCTOBER TERM 1970

No. 507

CALIFORNIA DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT, et al.,
Appellants,

vs.

JUDITH JAVA, et al.,
Appellees.

On Appeal from the United States District Court for the Northern District of California

Brief of the Appellants

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D. Nelson, Unemployment Insurance, The American Experience, 1915-1935, 167 (1969) 22

E. Witte, The Development of the Social Security Act (1962) 7

Graham, Public Assistance: The Right To Receive; The Obligation To Repay, 43 N.Y.U. L.Rev. 451 (1968) 16

J. Becker, The Problem of Abuse in Unemployment Benefits, 99-100 (1953) 9

J. Bentham, Anarchical Fallacies: Preamble. 2 Works (1843 Bowring ed.) 493 ..... 14, 15

1 K. Davis, Administrative Law Treatise, 412 (1958) 18

Riesenfeld, The Place of Unemployment Insurance Within the Patterns and Policies of Protection Against Wage Loss, 8 Vand. L.Rev. 218 (1955) 23, 24

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OPINION BELOW

The opinion of the United States District Court for the Northern District of California has been submitted for publication. No citation is available as of this date. A copy of the opinion is included in the Single Appendix. (A. 133.)

JURISDICTION

This suit was brought on behalf of appellees and all others similarly situated for injunctive and declaratory re-

lief under the authority of Title 42, U.S.C., section 1983, and Title 28, U.S.C., sections 1343(3) and 1343(4), and sections 2281 and 2284. Jurisdiction was further invoked under the Fourteenth Amendment to the United States Constitution and under 42 U.S.C., sections 501 et seq. The judgment of the specially constituted District Court was entered on May 14, 1970, and notice of appeal was filed in that court on June 12, 1970. Appellants filed their Jurisdictional Statement on August 7, 1970, and a Supplemental Brief on October 18, 1970, and this Court noted probable jurisdiction on October 26, 1970. The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by Title 28, U.S.C., sections 1253 and 2101(b). The following decision sustains the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case: *Florida Lime & Avocado Growers, Inc. v. Jacobsen*, 362 U.S. 73 (1960).

STATUTES INVOLVED

Two statutes are involved: section 1335 of the California Unemployment Insurance Code and section 503(a)(1) of Title 42 of the United States Code. Section 1335 of the California Unemployment Insurance Code provides as follows:

> "1335. If an appeal is filed, benefits with respect to the period prior to the final decision on the appeal shall be paid only after such decision, except that:
>
> "(a) If benefits for any week are payable in accordance with a determination by the department irrespective of any decision on the issue set forth in the appeal, such benefits shall be promptly paid regardless of such appeal, or
>
> "(b) If a referee affirms a determination allowing benefits, such benefits shall be paid regardless of any appeal which may thereafter be taken, and regardless of any action taken under Section 1336 or otherwise by

the director, Appeals Board, or other administrative body or by any court.

"If such determination is finally reversed, no employer's account shall be charged with benefits paid because of that determination."

The portion of the Social Security Act which is pertinent here is 42 U.S.C., § 503(a)(1), which reads as follows:

"§ 503. STATE LAWS, PROVISIONS REQUIRED; STOPPING PAYMENTS ON FAILURE TO COMPLY WITH LAW

"(a) The Secretary of Labor shall make no certification for payment to any State unless he finds that the law of such State, approved by the Secretary of Labor under the Federal Unemployment Tax Act, includes provision for:

"(1) Such methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary of Labor shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due; and

". . ."

The entire text of 42 U.S.C., § 503 is attached as Appendix A.

QUESTIONS PRESENTED

1. When a claimant for unemployment insurance has been ruled eligible in an initial interview but her last employer appeals that determination, does a procedure which stays payment of benefits until the employer's appeal is decided deprive the claimant of due process?

2. When a claimant for unemployment insurance has been ruled eligible in an initial interview but her last employer appeals that determination, is the requirement of 42 U.S.C., § 503(a)(1) that the state's procedure must be "reasonably calculated to insure full payment . . . when due" satisfied by a procedure which permits payments to be made only after a referee decides the employer's appeal?

3. A subsidiary question is presented because of the district court's ruling that California Unemployment Insurance Code section 1335 is totally invalid: Where a set of facts may reasonably be conceived to save the constitutionality of a state statute, should a federal court nevertheless rule that the statute is unconstitutional in its entirety?

STATEMENT OF THE CASE

Appellees Judith Java and Carroll Hudson and the class they represent are California citizens who (1) have claimed or will claim unemployment insurance benefits, (2) have been initially determined eligible for benefits, and (3) have not received benefits pending an appeal by their last employer. (A. 6.)

In late summer 1969, appellees Java and Hudson applied for unemployment insurance benefits. Pursuant to California procedure, they filled out the necessary forms. Each claimant's last employer contended that benefits should be denied because the claimant was discharged for misconduct or voluntarily quit without good cause. Each claimant was thereafter granted an interview for an initial determination as to eligibility. As a result of these interviews both claimants were ruled eligible for benefits. (A. 8-9.) California procedure further provides that such a determination may be appealed by the last employer within ten days. (Cal. Unemp.Ins. Code § 1335.) During this ten-day period a

claimant may receive one or two payments but once the employer's appeal is filed, no further payments are made until the appeal is decided. (A. 114-115.) Both claimants here received one or two payments until their last employers filed appeals, at which time further payments were withheld. (A. 8-9.) At the subsequent hearings before a referee plaintiff Hudson's eligibility was affirmed, but in the case of Judith Java the referee reversed the initial determination and ruled she had never been entitled to benefits. (A. 41-42.)

Prior to the hearings before the referee appellees brought this class action for declaratory relief and to enjoin enforcement of section 1335 of the California Unemployment Insurance Code, alleging that they and members of their class should be paid benefits during the time an employer's appeal was pending. Defendants filed a motion to dismiss. The relief prayed for by plaintiffs was granted, the court ruling that the instant case was indistinguishable from *Goldberg v. Kelly*, 397 U.S. 254 (1970). (A. 138.) It further ruled that the California statute does not provide a procedure which is reasonably calculated to insure full payment "when due" and the statute is, therefore, inconsistent with section 503(a)(1) of Title 42, U.S.C., the Social Security Act of 1935, as amended. (A. 139.)

SUMMARY OF ARGUMENT

Under California law (Cal.Unemp.Ins. Code § 1335) payments to a claimant initially found eligible by an interviewer may be suspended while an appeal by the claimant's last employer is pending. The United States District Court determined that: (1) this procedure violates due process in that payments should not be suspended without a prior hearing, and (2) that the procedure does not conform to the requirement in 42 U.S.C. § 503(a)(1) that permits fed-

eral participation only if the state program is "reasonably calculated to insure full payment . . . when due".

The court ruled that this case is controlled by *Goldberg v. Kelly*, 397 U.S. 254 (1970). But that case is distinguishable on a number of grounds. First, *Goldberg* was a welfare case and welfare is based on need; unemployment insurance is not. A procedural delay in a program not predicated on need is not as prejudicial as it is in a program where need is a *sine qua non*. Second, in welfare cases there are but two parties, the claimant and the state. In unemployment insurance, there are three: the claimant, the state, and the employer whose money is used to pay the claimant. The delay is unavoidable if the employer is to have an opportunity to be heard, a right which cannot be denied him. Third, in *Goldberg* the claimant's basic eligibility had been established and the question was whether the state could later terminate without a hearing. Here the initial question of eligibility has not yet been decided, and until it is, the claimant can make no claim to a property right or its equivalent.

On the issue of compliance with 42 U.S.C. § 503(a)(1), the lower court erred in ruling that the initial determination by an interviewer was enforceable at that point and that payments were immediately due. In the few cases where an employer asks to be heard, the initial decision-making process is not complete until he has presented his case and payments should, therefore, not be ruled "due" at any earlier stage. In any event, "due" means "fixed" or "owing", a status which has not been reached at the initial determination. This interpretation is confirmed by the fact that the Secretary of Labor has certified that the California statute is in compliance with the Social Security Act.

Even though the lower court found the six or seven week delay in this case violative of due process, it should not have

declared the California statute void in its entirety. While the question of what is a reasonable delay may be a matter of degree, surely if the state could, let us say, halve the waiting period, the delay would incontestably fall well within due process boundaries. The lower court could and should have drawn a guideline which would have saved the statute. It is a legal maxim that a court should not declare a statute totally void when it is void, if at all, only in application.

I. The California Procedures Are Not Inconsistent with the Social Security Act.

A. PAYMENTS ARE MADE "WHEN DUE".

The Social Security Act, 42 U.S.C., § 503(a)(1), provides that for the Secretary of Labor to find the state law consistent with federal standards, the state statute must be "reasonably calculated to insure full payment . . . when due". Unfortunately, there is scant legislative history concerning what Congress meant when it used the words "when due". Nevertheless, from the material available it appears that California Unemployment Insurance Code section 1335 is in harmony with the federal requirement that payments be made "when due". The California law is based on a recommendation made by federal authorities in 1935. Because the concept and mechanics of unemployment insurance were so complex the task of drafting a proposed federal law was entrusted to a Presidential Committee on Economic Security.[1] While the Social Security Act was under consideration by Congress in 1935, this Committee presented to Congress and circulated to the states two alternative statutes which would serve as models for state

1. See E. Witte, *The Development of the Social Security Act* (1962).

laws. Both model statutes provided for procedures identical to California Unemployment Insurance Code section 1335. See Hearings on S. 1130 Before the Senate Committee on Finance, 74th Cong., 1st Sess. at 602, 623 (1935). It is therefore apparent that the state procedures under examination here were before the Congress and considered by it and by the President's committee. It is ludicrous to believe Congress would acquiesce to the circulation of a model bill if it contained provisions inconsistent with a law (the Social Security Act) which Congress itself was considering at the same time. Indeed, the law Congress enacted for the District of Columbia not only provides for suspension of benefits after an appeal is filed, but even for a suspension while the time for appeal is running. D.C. Code §§ 46-311(b).

Section 1335 is supported not only by the history recited above, but also by common sense and by the commonly accepted meaning of the words "when due". Payments are "due" when they may properly be said to be "owing", *People v. Buckles,* 57 Cal.App.2d 76, 79 (1943), or, in other words, when the obligation has matured or become fixed.[2] *Feeser v. Feeser,* 93 Md. 716, 50 A. 406 (1901); *Cf. Joyce v. Scott,* 265 F.2d 369, 371-372 (1959); See also *In re Ingersoll Co.,* 148 F.2d 282, 284 (1945). While no universal rule

2. In California, following an initial determination favorable to a claimant, the state does commence payment immediately. However, if the employer appeals within the allowable ten day period, such payments are halted; in most cases the claimant has received one or two payments. The fact that the state has commenced payment following the initial determination should not be misconstrued. It is by no means a judgment by the state that the money is "owing" at that point or is legally due. It simply represents a recognition by the state that the employer probably will not appeal and there is little risk in proceeding to pay the claimant immediately. The soundness of this judgment is borne out by the fact that in 1968, for example, employers filed appeals in only two per cent (2%) of those cases where an initial determination was made favorable to the applicant. (A. 72, 74.)

may be formulated as to when an obligation is fixed appellants submit that in the context of unemployment insurance the Legislature has spoken, declaring that this point is reached only after an employer's appeal has been heard and resolved. This legislative judgment makes good sense. When an employer appeals, there is a sufficient cloud on the initial determination as to warrant withholding benefits until the appeal is decided. By contrast, at a later point in the proceedings, if the referee affirms the initial determination, the claimant's ultimate success is deemed sufficiently probable as to justify commencement and continuation of payments irrespective of further appeals. Cal.Unemp.Ins. Code § 1335(b).[3]

The legislative judgment is also sensible from an administrative law standpoint. Although the lower court considered the initial determination by a claims interviewer as virtually binding (A. 137), it is far more logical to ascribe relative finality to the referee's decision rather than the interviewer's. As one commentator stated,

> "[The appeals authorities] perform the usual explicit function of redressing injustices or correcting errors made at the lower levels of administration where action is typically more hurried and personnel presumably less competent." J. Becker, *The Problem of Abuse in Unemployment Benefits*, 99-100 (1953).

Nor does due process dictate that payments are due following an initial determination. Obviously, claimants would

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3. It is by no means certain that the Constitution compels payments to be made even at this point. *Cf. Pennsylvania Chamber of Commerce v. Torquato*, 386 Pa. 306, 125 A.2d 755, 757 (1956); *cert. denied*, 352 U.S. 1024; *Chrysler Corp. v. Appeals Board of Michigan Unemployment Comp. Commission*, 301 Mich. 351, 3 N.W.2d 302 (1942); *State ex rel. Campbell v. State*, 223 Ind. 59, 57 N.E.2d 433 (1944); *Dallas Fuel Co. v. Horne*, 230 Iowa 1148, 300 N.W. 303 (1941).

prefer the extreme sought by the plaintiffs here, i.e., that benefits be due and payable immediately. On the other hand, employers would prefer that benefits be withheld so long as the decision to pay is under appeal at any level, including the appeals through the courts. In balancing these conflicting demands, the Legislature has struck a compromise, suspending benefits only through one level of review or until the first appellate level decides in the claimant's favor. See *Abelleria v. District Court of Appeal,* 17 C.2d 280, 298 (1941).

In light of the fact that section 1335 is, in effect, a legislative pronouncement as to when payments are due and because that pronouncement has a sound basis, it is unreasonable to contend that the obligation is "fixed" after the initial determination by a claims interviewer.

In any event, it is surprising that the lower court would presume to rule that the California procedure is out of conformity with the Social Security Act. The fact is that the Secretary of Labor has already certified that the California procedure is in conformity with the Act. His finding is entitled to great weight, *cf. Rosado v. Wyman,* 397 U.S. 397, 406-407, 415 (1970), and is not judicially reviewable. See *Arizona v. Hobby,* 221 F.2d 498 (D.C. Cir. 1954); *Isbrandtsen Co. v. Federal Maritime Board,* 159 F.Supp. 884 (D.C. Cir. 1958); *Ragan v. Madigan,* 194 F.Supp. 19, 20 (N.D. Cal. 1961).

B. THE DELAY INCIDENT TO APPEAL DOES NOT FRUSTRATE THE CONGRESSIONAL PURPOSE.

The purpose of the federal statute was to provide unemployment insurance benefits to tide workers over a period of involuntary unemployment. S.Rep. No. 628, 74th Cong., 1st Sess. 10-13 (1935). California has effectuated that purpose in sensational fashion: In 98 per cent (98%) of the

cases prompt payments are made to claimants initially determined eligible.

But Congress did not expect the impossible.[4] Note that the statute requires the state program only to be "reasonably calculated" to insure full payment when due. Congress was aware that in terms of administration it might well be impossible to implement that purpose in *every single case*. For example, benefits may generally be obtained only for a maximum of 26 weeks. Clearly, the claimant who is unemployed for a period beyond 26 weeks does not have money to "tide him over a period of involuntary unemployment". In this common situation, the congressional purpose is not being implemented, but no contention is made that this benefits limitation is invalid. Secondly, the framers must have realized that in a small percentage of cases more than the usual delay would be unavoidable. This is reflected by the fact that the model Act which Congress had before it, itself provided for suspension of payments pending appeals. See p. 8, *supra*.

II. Section 1335 of the California Unemployment Insurance Code Does Not Violate Due Process.

In simple terms, the central issue here is whether the employer's right to be heard before his property is taken is outweighed by the prejudice to a claimant resulting from a six-week delay while the employer's appeal is pending.[5] It is submitted that in resolving the due process issues

4. "The Constitution does not make it a condition of preventive legislation that it should work a perfect cure. It is enough if the questioned act has a manifest tendency to cure or at least make the evil less." Holmes, J., dissenting, *Louis K. Liggett Co. v. Baldridge*, 278 U.S. 105, 115 (1928).

5. In a sense it is misleading to characterize the employer's opportunity to be heard as an "appeal". Generally, an appeal implies that at an earlier time both parties to a controversy have had a full opportunity to present their respective cases and one

posed by this question, the Court should apply the durable criteria it has reiterated with rhythmic regularity at least since 1951, when Justice Frankfurter commented in *Joint Anti-Fascist Committee v. McGrath*, 341 U.S. 123 (1951) (concurring opinion):

> "Due process cannot be imprisoned within the treacherous limits of any formula." 341 U.S. at 162.
> ". . . what is unfair in one situation may be fair in another. [Citations.]." 341 U.S. at 163.
> "The precise nature of the interest that has been adversely affected, the manner in which this was done, the reason for doing it, the available alternatives to the procedure that was followed, . . . the balance of hurt complained of and good accomplished—these are some of the considerations that must enter into the judicial judgment." 341 U.S. at 163.

Following this statement Justice Frankfurter went on to analyze the facts in the case before him in terms of the criteria he had enunciated. The same approach is appropriate here.

The interests in this case are:

1. *Interest of the employee.* Quite simply, his main concern is to obtain maximum benefits as soon as possible for as long as possible.

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party, displeased with the result, seeks to have a higher tribunal redress the purported errors of the lower court. The procedure here does not fit this definition. Since the "appeal" is essentially the employer's first chance to present his case, it would be more accurate to characterize it as a "Request to be Heard". The Oregon statute, for example, provides:

> "Unless the claimant or one of the employing units entitled to be so notified, within 10 days after delivery of such initial determination . . . files with the administrator a request for hearing upon the initial or amended determination, such initial or amended determination shall be final and benefits shall be paid or denied in accordance therewith." Ore. Rev. Stat. § 657, 765(2). See also Burns Ind. Stat. Ann. 552-154(2)(a) (Com.Supp. 1968); Mass. Gen. Laws c. 151A, § 39; Ohio Rev. Code § 4141.28(G).

2. *Interest of the employer.* The employer has a direct financial interest in every claim filed by an employee for it is the employer's money which is used to pay the claimant. Generally, each time an employer's former employee is paid benefits, the employer's reserve account is charged and his experience rating is adversely affected. Even if the employer's account is not charged the unemployment insurance fund may become so depleted that the employer will be compelled to pay into the fund at a higher rate. Cal. Unemp.Ins. Code §§ 976.5, 977, 978. (See A. 50-52.) Thus the employer is interested in assuring that only claimants who are fully qualified receive benefits.

3. *Interest of the State.* The state acts more as a trustee than as an interested party. Since the unemployment insurance program is funded exclusively by employers and not by general tax revenues, the state has no direct fiscal interest and is neither an advocate for the claimant nor one for the employer. The state's obligation is merely to administer the program fairly and in conformity with state and federal statutes.

In 98% of the cases all three of the described interests are harmonized; claimants are paid promptly and no appeal by an employer is filed. The problem arises in the remaining 2% of the cases, of which the instant one is an example.

This brings us to the second of Justice Frankfurter's suggested criteria, viz., the manner in which the subject interest is adversely affected. This can best be understood in light of the factual setting in cases such as the instant one:

A claimant appears at the unemployment insurance office and applies for benefits. He is asked to fill out a number of forms and is told to return while the Department processes the application and verifies the information. After interviewing the claimant, the Department makes a pre-

liminary determination that the claimant is or is not eligible. If he is ruled eligible, the Department generally feels safe in commencing payments almost immediately since, statistically, it is unlikely that the employer will appeal. At this point, the Department also sends out a notice to the employer informing him that the claimant has been found eligible and that the employer may appeal within 10 days.

If the employer does in fact appeal, a hearing is scheduled at which both parties may appear and be represented and payments are suspended while the appeal is pending.[6] In most instances, the claimant has only received one or two payments during the 10 day appeal period. (A. 114-115.)

The referee then issues his decision. If the decision is in favor of the claimant, payments to the claimant commence immediately, irrespective of any further appeals by the employer. Cal.Unemp. Ins. Code § 1335(b).[7]

The aspect of this procedure which gave rise to the instant lawsuit is the fact that, generally, processing of the employer's appeal takes between six and seven weeks.[8]

It is understandable that a claimant would be upset at a six-week delay. But his situation is not demonstrably different from the victorious plaintiff in a tort suit who must weather lengthy appeals before he gets his money, or the taxpayer who pays first and then seeks a refund, or the businessman who waits anxiously for action on a license or zoning application. The point is that there is a price to be paid for living in an ordered society. "No law can be made that does not take something from liberty." J. Bentham, *Anarchical Fallacies: Preamble.* See 2 Works (1843 Bow-

6. This procedure is in effect in most jurisdictions. For statutes see A. 69-70.

7. The entire claims procedure is set forth in some detail at A. 129-132.

8. In 1968 the period was 49 days. (A. 106.) In 1969 the period was 40.5 days. (A. 104.)

ring ed.) 493. Adjustments of an individual's rights, obligations, and privileges cannot be made with computer-like swiftness and precision. Time is an unavoidable ingredient in the decision-making process. Delay, cost, inconvenience—all are inescapable incidents of living in a society predicated on orderly procedures.

Mindful that some delay will inevitably be encountered, is the delay in this case unreasonably long? It is submitted that the six or seven weeks involved here, a delay confined to a tiny percentage of all unemployment insurance cases, is not unreasonable. There are 71 field referees in California and they handle 38,319 appeals in benefit cases each year.[9] Appeals take time. Hearings must be scheduled at a time convenient to the parties who must be given a reasonable period within which to prepare their case. The matter must be heard and transcribed upon request; the referee must review the evidence and draft and distribute a decision. To accomplish all this within six or seven weeks is a considerable achievement, especially when compared to the 22 month wait for a jury trial in a typical California urban county, (A. 62) or the four month delay which was present in the *Goldberg* case.

What are the consequences to the employer if the delay is eliminated? The court below ordered that the state either grant an immediate hearing the moment an employer appeals so that the claimant does not miss a payment, or that the state pay benefits while the appeal is pending. The former suggestion is unrealistic from a technical standpoint. The latter, however, deserves closer scrutiny in terms of the effect making such payments will have on the employer.

First, should the employer prevail on the appeal, the money that the claimant has received during the pendency

9. Figures are for 1969.

of the appeal is essentially unrecoverable.[10] Second, since a substantial portion of the money expended cannot be recovered, it is apparent that the unemployment insurance fund will require replenishment. This is done, not by the state, but by employers who are responsible for maintaining the fund at a prescribed level. See §§ 930, 977, 978 Cal. Unemp.Ins. Code and A. 50-52. See Exhibits B-E, appended to Motion of Southern California Edison Company, et al., to Intervene in this proceeding. Thus the employer's property is being taken before he has had a meaningful opportunity to be heard.[11] By contrast, the claimant has enjoyed an overwhelming advantage up to this point.[12]

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10. Throughout this lawsuit the claimants have sought to establish that payments to claimants pending employer appeals result in no prejudice to employers since the state can recover the overpayments. This is untrue. First, although recoupment procedures are available in some cases, Cal.Unemp.Ins. Code § 1379, they may not be used in the absence of fraud or misrepresentation by a claimant, where recoupment would be against equity and good conscience. Cal.Unemp.Ins. Code § 1375. No contention was made that Mrs. Java was guilty of fraud and she herself admitted that she had been told the state would not attempt to recover overpayments from her. See Mrs. Java's deposition, 29:10-11. But even if the state had valid grounds for seeking recoupment in cases of this type, the effort is of only marginal value. Claimants die, move to other states, go bankrupt. Presently, in over one-third of the cases the state is unable to recoup a penny. Jurisdictional Statement, App. C, p. 15. If the lower court's decision is permitted to stand, its ramifications will cause the fund to lose almost $18,000,000 a year. *Ibid.*, p. 17. In any event, the resulting pressure on the Fund may well cause a tightening up of recoupment statutes. *Cf. Graham, Public Assistance: The Right To Receive; The Obligation To Repay*, 43 N.Y.U. L.Rev. 451, 487 (1968).

11. Justice Harlan, concurring in *Sniadach v. Family Finance Corp.*, 395 U.S. 337, 343 (1969), said, "I think that due process is afforded only by the kinds of 'notice' and 'hearing' which are aimed at establishing the validity . . . of the underlying claim against the alleged debtor *before* he can be deprived of his property or its unrestricted use." See also *District Unemp.Comp. Bd. v. Hahn & Co., Inc.*, 399 F.2d 987 (D.C. Cir. 1968); *Babb v. Bullitt*, 310 Ky. 211, 220 S.W.2d 394 (1949).

12. At the initial interview, generally only the claimant is present; he presents his version of the facts and may bring wit-

Summing up, we have a situation where 98% of all claimants are serviced promptly. In these cases, employers do not challenge claimants.[12] For the few claimants who face employer appeals, there is a delay which is of modest duration and which permits an employer to have his infrequent appeal heard before his purse is affected.

In terms of Justice Frankfurter's criteria—especially that which requires a balancing of hurt against good—it does not seem too much to ask that on those few occasions when an employer has legitimate doubt about the initial determination, he be given a chance to present his case. As Professor Davis has stated,

> "The true principle is that a party who has a sufficient interest or right at stake in a determination of

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nesses and documents to support his claim. The employer does not appear for two reasons: (1) having had no prior notice of the interview, it would be impossible for him to marshall documents and witnesses, leave the business unattended, and rush off to a hearing, and (2) 98% of the time he is unlikely to contest the initial determination anyway. Following the determination, the employer is informed of the decision and may then appeal. Until this point, only the claimant has had a full opportunity to present his case; as a practical matter, the employer has not had an effective opportunity to be heard until the matter is placed before a referee. The absence of the employer at the initial interview is of considerable benefit to the claimant. See S. Becker, *op. cit.*, p. 100.

13. The facts indicate that employers do not file frivolous appeals. They appeal only in about 2% of the cases. Approximately 47% of the appeals are decided in favor of the employer. (A. 59-60.) For graphic specific illustrations of this principle, see Exhibits B-E, appended to Motion of Southern California Edison Co., et al. to Intervene as Defendants-Appellants before this Court. Ironically, the decision of the court below would actually encourage frivolous appeals although the villain would be the employee and not the employer. By appealing, the employee would be able to stretch out his benefits irrespective of the merits of his appeal. *Cf. Comments, The Constitutional Minimum for the Termination of Welfare Benefits: The Need For and Requirements of a Prior Hearing,* 68 Mich. L.Rev. 112, 138-139 (1969).

> governmental action, should be entitled to an opportunity to know and to meet, with the weapons of rebuttal evidence, cross-examination and argument, unfavorable evidence of adjudicative facts. . . ." 1 K. Davis, Administrative Law Treatise, 412 (1958).

See also *Baldwin v. Hale*, 68 U.S. (1 Wall.) 233 (1863); *Anderson Natl. Bank v. Luckett*, 322 U.S. 233, 246 (1944); *Best v. Humboldt Placer Mining Co.*, 371 U.S. 334, 338 (1963); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950).

III. The Principles of Goldberg v. Kelly, 397 U.S. 254 (1970) Do Not Apply to Unemployment Insurance.

A. THE FACTS OF GOLDBERG ARE DISTINGUISHABLE FROM THOSE HERE.

In the *Goldberg* case once the initial decision concerning eligibility was made by the welfare department, that decision was final and was immediately implemented. The recipient was put on the welfare rolls and paid with periodic regularity. After benefits had been paid for some time, however, the welfare department decided to terminate payments on the basis of an unchallenged and apparently unsubstantiated recommendation made by a caseworker. Although the recipients were given notice that the department proposed to terminate benefits, they were not given an opportunity to confront the caseworker or anyone else who may have supplied damaging information. See 397 U.S. at 259. They were limited to objecting in writing, a privilege not only less effective than confrontation and cross-examination, but often valueless to many recipients whose education is limited and who enjoy only borderline literacy.

The case here is quite different. In *Goldberg* the question of basic eligibility was closed and the focus was on subsequent termination. Here the question of basic eligibility is still open. The focus is on a point earlier in the pro-

cedural continuum; we are still at the first stage, and the question of subsequent termination is never reached. This distinction makes a difference. It is one thing for a court to rule, as it did in *Goldberg,* that a recipient, once found eligible, cannot be terminated without a prior hearing. It is quite another to say that a claimant is entitled to payment *before* his eligibility has been established.

If we analogize to other areas of law, we might say that in unemployment insurance cases the initial determination of eligibility by the state is, in effect, subject to a condition subsequent. If the employer does not appeal during the 10-day period, the claimant's right "vests", so to speak.[14] If the employer does appeal, the initial determination cannot be deemed complete until that appeal is decided.

A further ground for distinguishing welfare cases from unemployment insurance cases lies in the method by which the two programs are funded. In the welfare situation, benefits are paid out of general tax revenues. Unemployment insurance programs, however, operate differently from welfare programs. First, an application for unemployment insurance benefits involves not only the claimant and the state but the private employers who fund the program. The money to pay benefits does not come from general tax revenues but from an identifiable segment of the population (employers) which is required to make contributions

14. This does not mean that the claimant will automatically qualify each week for benefits. The so-called "vesting" amounts only to a determination that a claimant had sufficient wages in his base period, that he did not leave work voluntarily, and that he was not fired for misconduct. While these matters, then, are foreclosed from further examination, when the claimant returns each week for benefits he will still be required to meet other criteria which are applicable to his weekly claim. For example, he will be asked to show that he was available for work during the prior week, that he did not refuse a valid job offer, etc. Cal.Unemp.Ins. Code § 1253.

into a reserve fund to pay benefits. Because of this method of funding the program, the state does not have the same direct interest it has in the welfare situation where every dollar the state saves may be available for other programs which compete for state funds. In the unemployment insurance area the state is basically neutral since it cannot use the unemployment insurance fund for other state purposes, but must simply insure that sufficient money is available in the fund to pay eligible claimants. The state, then, may be looked upon as a fiduciary in administering the unemployment insurance fund. The real parties in interest are the employers who will be required to pay more into the fund if plaintiffs' position here is adopted. The injection of this private interest introduces an element in this case which was not present in *Goldberg*. The importance of this element is that here we are concerned with due process for two parties—claimants and employers—whereas in the welfare situation the concern was solely that the claimant would receive due process.[15]

B. NEED IS THE BASIS FOR WELFARE ELIGIBILITY BUT NOT FOR UNEMPLOYMENT INSURANCE.

In the clamor produced today by numerous frontal attacks on public assistance and social insurance programs, it is important to consider due process in its proper perspective. Due process is not a concept which is the exclusive

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15. The first sentence of the majority opinion in *Goldberg* demonstrates this concern:

> "The question for decision is whether a State which terminates public assistance payments to a particular recipient without affording him the opportunity for an evidentiary hearing prior to termination *denies the recipient procedural due process* in violation of the Due Process Clause of the Fourteenth Amendment." 397 U.S. 255. (Emphasis added.)

province of the welfare claimant, the injured workmen, or the applicant for unemployment insurance benefits. While available to persons in these classes, it is equally available to the wealthy, to professional persons, to vast corporate entities, to small entrepreneurs, and the like.[16] In short, due process knows no social or economic distinctions. For this reason, sententious appeals to sympathy and dramatic portraits of dire economic circumstances serve only to cloud the issue. This is not to say that economic circumstances are totally irrelevant. But where they are germane, they constitute but one factor which goes into balancing the due process equation.

In *Goldberg* this factor outweighed most others. Need, after all, is at the very core of public assistance. Welfare is given only to those who are destitute, bereft of savings, earned income, or other sources of funds. For this reason the lower court's repeated references to the plaintiffs' "brutal need" in *Goldberg* were entirely relevant and no doubt partially dispositive. See *Kelly v. Wyman*, 294 F.Supp. 893, 900 (1969); *Goldberg v. Kelly*, 397 U.S. 254, 261 (1970).[17]

In contrast to hoary welfare laws which date back at least to the Elizabethan Poor Laws, unemployment insurance is of fairly recent vintage and was designed to meet a wholly different problem.[18] The qualified unemployed

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16. "The Constitution of the United States is a law for rulers and people . . . and covers with the shield of its protection all classes of men, at all times, and under all circumstances." *Ex parte Milligan*, 4 Wall. 2, 120; 18 L.ed. 281, 295 (1866, U.S.).

17. The nightmarish, almost unbelievable, living conditions suffered by the plaintiffs in *Goldberg* are documented by the District Court at 294 F.Supp. 899-900.

18. Although the concept of unemployment insurance had received desultory consideration near the turn of the century, the real impetus for legislation was the Depression. The distinction

worker receives unemployment insurance irrespective of whether he can draw upon savings or whether he receives income from property or relatives. Indeed, it is this absence of a means test which makes unemployment insurance preferable to relief. H. R. Rep. No. 615, 74th Cong., 1st Sess. 7 (1935); S. Rep. No. 628, 74th Cong., 1st Sess. 11 (1935).

The irony is that the greater an employee's need the less unemployment insurance he is likely to receive. The amount of weekly benefits a worker receives varies proportionately with his wages in a four-quater period and the quarter in which he receives his highest wages. Cal.Unemp.Ins.Code §§ 1275, 1280 and 1281. The higher his wages the higher the weekly benefit and the total maximum benefits he receives. Thus those who have more need receive lower, not higher benefits. Moreover, a worker who has earned less than $720 in the four quarters of his base period is not entitled to any benefits whatsoever. Cal.Unemp.Ins. Code §§ 1275 and 1281. Consequently, the worker who may be most in need of unemployment insurance has no entitlement to benefits.

Thus the "crucial factor" of need (397 U.S. at 264) which was dispositive in *Goldberg* cannot have the same impact in deciding the question of due process in unemployment

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between welfare and unemployment insurance was recognized from the beginning. In 1931, Franklin D. Roosevelt, then Governor of New York, sent his Labor Commissioner, Frances Perkins, to Great Britain to study the British system of unemployment insurance. She discovered the British had confused poor relief with insurance, that they had disregarded actuarial principles, and that coverage was often expanded without regard for contributions. She cautioned against these errors and advised that any unemployment insurance program considered in this country should be based on a principle of limited payments with the retention of benefits to reserves in accordance with insurance principles. See D. Nelson, *Unemployment Insurance, The American Experience, 1915-1935*, 167 (1969).

insurance cases.[19] While we cannot ignore the fact that some unemployment insurance claimants are in fact needy,[20] we must recognize that unemployment insurance is available to rich and poor alike and hence it is illogical to permit the right to benefits to be accelerated in direct relation to the severity of a claimant's economic situation.

The difference between welfare and unemployment insurance with respect to need was pointed out by a noted authority who stated,

> ". . . public assistance programs provide benefits according to individual and demonstrated budgetary needs and are usually financed from so-called general revenues, i.e., tax impositions of the direct or excise type without particular connection between the class of taxpayers or transactions bearing the burden and the class of recipients benefited by the program. Social insurance, on the other hand, is characterized by benefits which are payable without proof of need and is usually financed, at least in part, by either the prospective beneficiaries themselves or a class of taxpayers upon whom these beneficiaries are economically dependent or both. . . ." Riesenfeld, *The Place of Unemployment*

19. This Court itself observed that the exigencies of welfare distinguish it from other programs. At 397 U.S. 262, the majority declared that constitutional restraints apply equally to welfare and to "disqualification for unemployment compensation [citation]; or to denial of a tax exemption [citation]; or to discharge from public employment [citation]." But two pages later the Court noted that because of the need concept, special considerations apply to welfare, dictating a result which could well be different from that applicable to the other examples mentioned by the Court. At page 264 the Court specifically noted that this "crucial factor" (need) was "not present in the case of the blacklisted government contractor, the discharged government employee, the taxpayer denied a tax exemption *or virtually anyone else whose governmental largesse is ended.*" (Emphasis added.)

20. They are not all as needy as the claimants here would have us believe. In 1968, for example, 43% of the eligible claimants received the maximum weekly benefit amount. The average earnings of such claimants was $8,329 annually.

Insurance Within the Patterns and Policies of Protection Against Wage Loss, 8 Vand.L. Rev. 218, 223 (1955).

The distinction is of considerable importance since a delay of payments in a program predicated primarily on need may be intolerable while less protracted delays under other programs where need is not strictly relevant may be within constitutional limits. *Cf. Dandridge v. Williams,* 397 U.S. 471, 522 (1970) (dissenting opinion).

IV. A Court Should Save the Constitutionality of a Statute Whenever Possible.

A cardinal principle of statutory construction is that a statute should be saved whenever possible and not destroyed. *Labor Board v. Jones and Laughlin,* 301 U.S. 1, 30 (1937); *United States v. Menasche,* 348 U.S. 528, 538 (1955); *Epstein v. Helvering,* 120 F.2d 427 (1941). As the United States Supreme Court has stated, "It is within the power and is the duty of this Court to construe a statute so as to avoid the danger of unconstitutionality if it may be done in consonance with the legislative purpose." *Communications Association v. Douds,* 339 U.S. 382, 407 (1950); See also *Antilles Surveys, Inc. v. DeJongh,* 358 F.2d 787; *cert. denied,* 385 U.S. 900 (1966); See generally 16 C.J.S., Constitutional Law, §§ 92-101.

In the instant case, plaintiffs' real objection is that the withholding of payments pending an employer appeal results in an inordinate delay and that the claimant, even if eventually victorious, nevertheless must wait for payment for an unreasonable length of time. What is reasonable or unreasonable, of course, depends on the circumstances of each case. In the *Goldberg* case, for example, the delay occasioned by the withholding of payments was some four months and the court concluded that a delay of this length

was unreasonable. In the instant case, however, the delay is on the average approximately six or seven weeks, a delay which is not unreasonable in light of the problems of administering a program of this magnitude. The law is in the business of drawing lines, of deciding what specific procedures fall above or below "the Plimsoll line of due process",[21] and the court below could easily have framed a guideline for the Department indicating that a lesser delay in this case would be acceptable. The court's duty in this respect is underscored by the fact that most other states have a statute similar to section 1335 and the ruling in the instant case will indubitably encourage similar attacks on statutes across the nation. Under such circumstances, it is urged that a court should be particularly reluctant to rule that a state statute is unconstitutional.

CONCLUSION

For the reasons stated, the decision of the District Court should be reversed.

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Respectfully submitted,

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21. Frankfurter, J., *Fikes v. Alabama*, 352 U.S. 191, 199 (1957).

[illegible]. State laws, provisions required; stopping payments on failure to comply with law

(a) The Secretary of Labor shall make no certification for payment to any State unless he finds that the law of such State, approved by the Secretary of Labor under the Federal Unemployment Tax Act, includes provision for—

(1) Such methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary of Labor shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due; and

(2) Payment of unemployment compensation solely through public employment offices or such other agencies as the Secretary of Labor may approve; and

(3) Opportunity for a fair hearing, before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied; and

(4) The payment of all money received in the unemployment fund of such State (except for refunds of sums erroneously paid into such fund and except for refunds paid in accordance with the provisions of section 1606(b) of Title 26), immediately upon such receipt, to the Secretary of the Treasury to the credit of the employment trust fund established by section 1104 of this title; and

(5) Expenditure of all money withdrawn from an unemployment fund of such State, in the payment of

unemployment compensation, exclusive of expenses of administration, and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 1606(b) of Title 26: *Provided,* That an amount equal to the amount of employee payments into the unemployment fund of a State may be used in the payment of cash benefits to individuals with respect to their disability, exclusive of expenses of administration: *Provided further,* That the amounts specified by section 1103(c) (2) of this title may, subject to the conditions prescribed in such section, be used for expenses incurred by the State for administration of its unemployment compensation law and public employment offices; and

(6) The making of such reports, in such form and containing such information, as the Secretary of Labor may from time to time require, and compliance with such provisions as the Secretary of Labor may from time to time find necessary to assure the correctness and verification of such reports; and

(7) Making available upon request to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation and employment status of each recipient of unemployment compensation, and a statement of such recipient's rights to further compensation under such law; and

(8) Effective July 1, 1941, the expenditure of all moneys received pursuant to section 502 of this title solely for the purposes and in the amounts found necessary by the Secretary of Labor for the proper and efficient administration of such State law; and

(9) Effective July 1, 1941, the replacement, within a reasonable time, of any moneys received pursuant to

section 502 of this title, which, because of any action or contingency, have been lost or have been expended for purposes other than, or in amounts in excess of, those found necessary by the Secretary of Labor for the proper administration of such State law.

(b) Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that in the administration of the law there is—

(1) a denial, in a substantial number of cases, of unemployment compensation to individuals entitled thereto under such law; or

(2) a failure to comply substantially with any provision specified in subsection (a) of this section;

the Secretary of Labor shall notify such State agency that further payments will not be made to the State until the Secretary of Labor is satisfied that there is no longer any such denial or failure to comply. Until he is so satisfied he shall make no further certification to the Secretary of the Treasury with respect to such State: *Provided,* That there shall be no finding under clause (1) until the question of entitlement shall have been decided by the highest judicial authority given jurisdiction under such State law: *Provided further,* That any costs may be paid with respect to any claimant by a State and included as costs of administration of its law.

(c) The Secretary of Labor shall make no certification for payment to any State if he finds, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law—

(1) That such State does not make its records available to the Railroad Retirement Board, and furnish to

the Railroad Retirement Board at the expense of the Railroad Retirement Board such copies thereof as the Railroad Retirement Board deems necessary for its purposes; or

(2) That such State is failing to afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment insurance law.

Aug. 14, 1935, c. 531, Title III, § 303, 49 Stat. 626; June 25, 1938, c. 680, § 13(g), 52 Stat. 1112; June 20, 1939, c. 227, § 18, 53 Stat. 848; Aug. 10, 1939, c. 666, Title III, § 302, 53 Stat. 1378; 1946 Reorg.Plan No. 2, § 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 10, 1946, c. 951, Title IV, § 416(c), 60 Stat. 991; 1949 Reorg.Plan No. 2, § 1, eff. Aug. 20, 1949, 14 F.R. 5225, 63 Stat. 1065; Aug. 28, 1950, c. 809, Title IV, § 405(b), 64 Stat. 560; Aug. 5, 1954, c. 657, § 5(a) (1), 68 Stat. 673.